

United States
Circuit Court of Appeals
For the Ninth Circuit.

GUSTAVE JOHNSON,
Plaintiff in Error,
vs.
UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
First Division.

FILED
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RECORDED

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Circuit Court of Appeals
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GUSTAVE JOHNSON,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names of Attorneys of Record.

For Defendant and

Plaintiff in Error:

EDWARD A. O'DEA, Esq., San Francisco.

For Plaintiff and

Defendant in Error:

United States Attorney, San Francisco.

United States of America, District Court of the
United States, Northern District of California.

Clerk's Office.

No. 13,169.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUSTAVE JOHNSON,

Defendant.

Praecipe for Transcript on Writ of Error.

To the Clerk of Said Court:

Sir:

Please prepare the transcript of record upon writ of error in the above-entitled cause.

1. Indictment,
2. Arraignment and demurrer filed by defendant,
3. Order overruling demurrer (with exception),
4. Plea of defendant,
5. Record of trial,
6. Verdict of jury,

7. Judgment of Court,
8. Motion for a new trial and in arrest of judgment,
9. Order denying same (each),
10. Clerk's certificate to judgment-roll,
11. Petition for writ of error on behalf of defendant,
12. Assignment of errors on behalf of defendant,
13. Citation on writ of error,
14. Return thereto,
15. Order allowing writ of error and supersedeas,
16. Supersedeas bond of defendant,
17. Costs bond on appeal,
18. Bill of exceptions,
19. Writ of error (original),
20. Clerk's certificate to transcript of record, [1*]
21. Stipulations and orders of May 8, 1923; June 7th, 1923; June 29th, '23, and July 28th, 1923.

EDWARD A. O'DEA,
Attorney for Defendant.

[Endorsed]: Filed Aug. 1, 1923. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.
[2]

*Page-number appearing at foot of page of original certified Transcript of Record.

In the Southern Division of the United States District Court for the Northern District of California, First Division.

(Indictment.)

At a stated term of said Court begun and holden at the City and County of San Francisco within and for the Southern Division of the Northern District of California on the first Monday of March in the year of our Lord One Thousand Nine Hundred and Twenty-three.

The Grand Jurors of the United States of America within and for the Division and District aforesaid, on their oaths present: THAT

GUSTAVE JOHNSON and RAY CROXALL hereinafter called the defendants, heretofore, to wit, on or about March 23, 1923, at the City and County of San Francisco and within the Southern Division of the Northern District of California, then and there being, did then and there violate a requirement of the Act of December 17, 1914, as amended February 24, 1919, in that they did knowingly, wilfully, unlawfully, and feloniously have in their possession a certain preparation and derivative of opium, to wit, one can morphine and one finger stall containing approximately a total of 194 grains of morphine said defendants then and there being persons required to register and pay a tax under the provisions of the Act aforesaid as amended, and said defendants not then and there having registered under the provisions of the said Act, and

not then and there having paid the special tax provided for by the aforesaid Act on the said morphine.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

JOHN T. WILLIAMS,
United States Attorney.

[Endorsed]: A true bill.

H. B. CLIFTON,
Foreman.

Presented in Open Court and Ordered Filed Mar. 27, 1923. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [3]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 28th day of March, in the year of our Lord, One Thousand Nine Hundred and Twenty-three. Present: the Honorable ROBERT S. BEAN, District Judge.

No. 13,169.

UNITED STATES OF AMERICA

vs.

GUSTAVE JOHNSON and RAY CROXALL.

Minutes of Court—March 28, 1923—Arraignment.

In this case defendants were produced by the U. S. Marshal. On motion of G. J. Fink, Esq., Asst. U. S. Atty., and on order of Court, each defendant was duly arraigned upon Indictment filed herein.

E. A. O'Dea, Esq., was present as attorney for defendant Gustave Johnson. It appearing that defendant Ray Croxall was without counsel, the Court ordered that Mr. O'Dea be and he is hereby appointed as counsel for said defendant.

Each defendant stated his true name to be as contained in Indictment and thereupon, on motion of Mr. O'Dea, the Court ordered case continued to Mar. 31, 1923, for entry of defendants' pleas. Further ordered that defendants, in default of bonds as heretofore ordered, stand committed and that *mittimus* issue. [4]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 2d day of April, in the year of our Lord, One Thousand Nine Hundred and Twenty-three. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 13,169.

UNITED STATES OF AMERICA,

vs.

GUSTAVE JOHNSON and RAY CROXALL.

Minutes of Court—April 2, 1923—Plea of Defendants.

In this case defendants were present with Attorney, E. A. O'Dea, Esq. G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of the United States. Defendants were duly arraigned upon Indictment filed herein, stated true names to be as contained therein and thereupon defendant Gustave Johnson plead "not guilty" and defendant Ray Croxall plead "guilty" of offense charged, which pleas the Court ordered and the same are hereby entered. On motion of Mr. Fink, the Court ordered case continued to April 3, 1923, for hearing on demurrer to indictment as to defendant Gustave Johnson and for pronouncing of judgment as to defendant Ray Croxall. [5]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 13,169.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUSTAVE JOHNSON and RAY CROXALL,
Defendants.

Demurrer to Indictment.

Comes now the defendants in the above-entitled action, and protesting their innocence of all the acts alleged against them in the indictment herein, and especially reserving and in no wise waiving their right to plead not guilty to said indictment and demur and except to such indictment and for their demurrer and exceptions thereto, urge and say:

I.

That the indictment does not state facts sufficient to constitute an offense against the laws of the United States and particularly against the provisions of the Act of December 17, 1914, as amended February 24, 1919.

II.

That said indictment is uncertain in that it cannot be ascertained therefrom how defendants were persons required to register and pay a tax under the provisions of the Act of December 17, 1914 as amended February 24, 1919.

III.

That said indictment is uncertain because it cannot be ascertained therefrom whether the defendants are charged as being dealers in narcotics and required to register or whether they obtained the narcotics above mentioned from a registered dealer in pursuance of a prescription written for the legitimate medical use of defendants. [6]

IV.

That the said indictment is uncertain in that it

cannot be ascertained therefrom why the defendants, or either of them, were persons required to pay the special tax provided for by the aforesaid Act on the said morphine.

V.

That said indictment is uncertain in that it cannot be ascertained therefrom whether the defendants had joint possession of the narcotics mentioned in the indictment or whether one defendant has possession of one can of morphine and the other defendant had possession of the finger stall containing the morphine mentioned in said indictment.

VI.

That said indictment is uncertain in that it cannot be ascertained therefrom whether the defendants, or either of them, are charged with possessing the narcotics mentioned in said indictment at the same time.

VII.

That said indictment is uncertain in that it cannot be ascertained therefrom whether the Government charges one offense against the defendants or whether the Government is attempting to charge the defendants with two offenses in one count.

VIII.

That said indictment is uncertain in that it cannot be ascertained therefrom what connection, if any, the defendants had with each other, whether one was the agent of the other, or whether each was acting independent of the other, or whether they were acting under a partnership agreement.

WHEREFORE, the defendants pray that the indictment against them be quashed and held for naught.

Dated: Apr. 2, 1923.

EDWARD A. O'DEA,
Attorney for Defendants. [7]

Due service of the within demurrer to indictment is hereby admitted this 2d day of April, 1923.

GROVE J. FINK,
Asst. United States Attorney.

[Endorsed]: Filed Apr. 2, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[8]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 3d day of April, in the year of our Lord, One Thousand, Nine Hundred and Twenty-three. Present: The Honorable JOHN S. PARTRIDGE, District Judge.

No. 13169.

UNITED STATES OF AMERICA

vs.

GUSTAVE JOHNSON and RAY CROXALL.
**Minutes of Court—April 3, 1923—Order Overruling
Demurrer.**

This case came on regularly for pronouncing of

judgment as to defendant Ray Croxall and for hearing of Demurrer to Indictment as to defendant Gustave Johnson. Said defendants were present with Attorney, E. A. O'Dea, Esq., G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of the United States. Defendant Ray Croxall was in custody of U. S. Marshal.

After hearing argument as to said demurrer on behalf of respective parties, the Court ordered that said demurrer be and the same is hereby overruled, to which order Mr. O'Dea on behalf of defendant entered an exception. On motion of Mr. Fink, the Court ordered trial set for Apr. 17, 1923.

On motion of Mr. Fink and over objection of Mr. O'Dea, further ordered matter of judgment as to defendant Ray Croxall continued to said Apr. 17, 1923. [9]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 19th day of April, in the year of our Lord, One Thousand Nine Hundred and Twenty-three. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 13,169.

UNITED STATES OF AMERICA

vs.

GUSTAVE JOHNSON and RAY CROXALL.

Minutes of Court—April 19, 1923—Trial.

This case came on regularly for trial as to defendant Gustave Johnson and for pronouncing of judgment as to defendant Ray Croxall. Said defendants were present with their attorney, E. A. O'Dea, Esq. G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of the United States. Upon calling of case, all parties answering ready for such trial, the Court ordered that the same do proceed and that the Jury Box be filled from the regular panel of trial jurors of this court. Accordingly the hereinafter named persons, having been duly drawn by lot, sworn, examined and accepted, were duly sworn to try the issues herein, viz:

Jos. M. O'Malley, Chas. M. Boynton H. W. Morgan, Jos. T. Mitchell, W. H. Blanchard, A. E. Berg, Herbert P. Blanchard, George Dias, Berrien P. Anderson, A. J. Olson, Arthur C. Folsom and John W. King.

Mr. Fink made statement to the Court and Jury as to the nature of the case.

On motion of Mr. O'Dea, the Court ordered that all persons to be called as witnesses herein, except as to M. E. Dowell, be excluded from the courtroom, during the introduction of evidence, except when on the stand.

Mr. Fink then called, as witnesses on behalf of the United States, M. E. Dowell, A. A. Elliott, R. F. Love and Otto [10] Frederickson, each of whom was duly sworn and examined, and introduced in

evidence certain exhibits which were filed and marked U. S. Exhibits Nos. 1, 2 (cans and contents) and 3 (envelope and contents) and thereupon rested case of United States.

Mr. O'Dea, then moved the Court for order instructing the jury to return verdict of not guilty as to defendant Gustave Johnson, which motion the Court ordered denied.

Mr. O'Dea thereupon called the defendant, Gustave Johnson, who was duly sworn and examined in his own behalf.

The hour of adjournment having arrived, the Court, after admonishing the jury herein, ordered that the further trial of said defendant upon the indictment filed herein be and the same is hereby continued to Apr. 20, 1923, at 11 A. M., and that all parties be and appear on said day accordingly.
[11]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 20th day of April, in the year of our Lord, one thousand nine hundred and twenty-three. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 13,169.

UNITED STATES OF AMERICA,

vs.

GUSTAVE JOHNSON and RAY CROXALL.

**Minutes of Court—April 20, 1923—Trial and
Verdict.**

This case came on regularly this day for pronouncing of judgment as to defendant Ray Croxall and for further trial as to defendant Gustave Johnson. Defendants were present with their attorney, E. A. O'Dea, Esq. Defendant Ray Croxall was present in custody of U. S. Marshal. G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of the United States. The jury heretofore impaneled and sworn to try said defendant was present and complete.

Mr. O'Dea called Matt. Tierney and Mrs. Marion Dexter, each of whom was duly sworn and examined as witnesses on behalf of defendant. Mr. O'Dea then called defendant Gustave Johnson, who was further examined, and thereupon rested case on behalf of defendant. Mr. O'Dea then moved the Court for order instructing jury to return verdict of not guilty and, after hearing attorneys, the Court ordered said motion denied and to which order an exception was entered.

The case was then argued by Mr. Fink and Mr. O'Dea and submitted, whereupon the Court proceeded to instruct the jury herein, who, after being

so instructed, retired at 12:08 P. M., to deliberate upon a verdict and subsequently returned into Court at 12:12 P. M., and upon being called all twelve (12) jurors answered to their names and were found to be present, and in answer to question of the Court, stated they had agreed upon a verdict, [12] and presented a written verdict, which the Court ordered filed and recorded, viz.: "We, the Jury, find as to the defendant at the Bar, as follows: Gustave Johnson, guilty as charged. B. P. Anderson, Foreman."

Thereupon the Court ordered that the jurors herein be and they are hereby discharged from further consideration of this case and from attendance upon the court until Apr. 24, 1923, at 11 A. M., and that Juror Joseph T. Mitchell be discharged from further jury service for the term.

After hearing attorneys, the Court ordered that the matter of pronouncing of judgment as to defendant Gustave Johnson be and the same is hereby continued to Apr. 28, 1923. On motion of Mr. Fink, the Court ordered that the amount of bond for release of defendant Gustave Johnson, pending judgment, be and the same is hereby fixed in the sum of \$5,000.00 and that defendant, in default thereof, stand committed and that *mittimus* issue.

After hearing attorneys, defendant Ray Croxall was called for judgment, duly informed by the Court of the nature of the indictment filed herein, of his arraignment and plea. Defendant was then asked if he had any legal cause to show why judgment

should not be entered herein and, after hearing Officer M. E. Dowell, defendant and attorneys, no cause appearing why judgment should not be pronounced, the Court ordered that said defendant Ray Croxall, for offense of which he stands convicted, be imprisoned for period of thirteen (13) months in the United States Penitentiary at McNeil Island, State of Washington. Further ordered that said defendant stand committed to custody of U. S. Marshal for this district to execute said judgment, and that a commitment issue. [13]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 13,169.

THE UNITED STATES OF AMERICA

vs.

GUSTAVE JOHNSON, et al.

Verdict.

We, the jury, find as to the defendant at the bar as follows: Gustave Johnson, Guilty, as charged.

B. P. ANDERSON,

Foreman.

[Endorsed]: Filed April 20, 1923, at 12 o'clock and 12 minutes P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [14]

In the Southern Division of the United States
District Court, for the Northern District of
California, First Division.

No. 13,169.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUSTAVE JOHNSON,

Defendant.

Motion for New Trial.

Now comes Gustave Johnson, defendant in the
above-entitled cause, and by Edward A. O'Dea, Esq.,
his attorney, moves the Court to set aside the ver-
dict rendered herein and to grant a new trial of
said cause and for reasons therefor, shows to the
Court the following:

I.

That the verdict in said cause is contrary to law.

II.

That the verdict in said cause was not supported
by the evidence in the case.

III.

That the evidence in said cause is insufficient to
justify said verdict.

IV.

That the Court erred upon the trial of said cause
in deciding questions of law arising during the
course of the trial which errors were duly ex-
cepted to.

V.

That the Court improperly instructed the jury to defendant's prejudice.

Dated at San Francisco, California, this 28th day of April, 1923. [15]

G. A. JOHNSON,

Defendant.

EDWARD A. O'DEA,

Attorney for Defendant, Gustave Johnson.

Due service of the within motion for new trial is hereby admitted this —— day of April, 1923.

GROVE J. FINK,

Asst. U. S. Atty.

[Endorsed]: Filed Apr. 28, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [16]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 13,169.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUSTAVE JOHNSON,

Defendant.

Motion in Arrest of Judgment.

Now comes the defendant, Gustave Johnson, and respectfully moves the Court to arrest and withhold

judgment in the above-entitled cause and that the verdict of conviction of said defendant heretofore given and made in the said cause be vacated and set aside and declared to be null and void for each of the following causes and reasons:

I.

That the indictment on file herein does not charge or state facts sufficient to constitute a public offense under the laws of the United States against this defendant.

II.

That said indictment improperly includes two offenses without alleging same in separate counts.

III.

That this Court has no jurisdiction to pass judgment upon the defendant by reason of the fact that said indictment on file herein does not state a public offense under the laws of the United States.

IV.

WHEREFORE, by reason of the premises the defendant prays this Honorable Court that the judgment herein be arrested and withheld and that the conviction of the defendant be declared [17] null and void.

G. A. JOHNSON,

Defendant.

EDWARD A. O'DEA,

Attorney for Defendant, Gustave Johnson.

Due service of the within motion in arrest of judgment is hereby admitted this — day of April, 1923.

GROVE J. FINK,

Asst. U. S. Atty.

[Endorsed]: Filed Apr. 28, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [18]

At a Stated Term of the Southern Division of the United States District Court, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 28th day of April, in the year of our Lord, one thousand nine hundred and twenty-three. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 13,169.

UNITED STATES OF AMERICA

vs.

GUSTAVE JOHNSON and RAY CROXALL.

Minutes of Court—April 28, 1923—Judgment.

This case came on regularly for pronouncing of judgment as to defendant Gustave Johnson, who was present with his attorney, E. A. O'Dea, Esq. G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of the United States. Defendant was called for judgment, duly informed by the Court of the nature of the indictment filed herein, of his arraignment, plea and the verdict of the jury. Defendant was then asked if he had any legal cause to show why judgment should not be entered herein and thereupon Mr. O'Dea, on behalf of defendant, presented and filed motion for new trial, which

motion the Court ordered denied and to which order Mr. O'Dea entered an exception, and then presented and filed a motion in arrest of judgment, which motion the Court also ordered denied and to which order Mr. O'Dea entered an exception. Thereupon no sufficient cause appearing why judgment should not be pronounced, the Court ordered that said defendant Gustave Johnson, for offense of which he stands convicted, be imprisoned for period of three (3) years and six (6) months in the United States Penitentiary at McNeil Island, State of Washington.

Mr. O'Dea thereupon made oral petition for writ of error herein and, after hearing attorneys, the Court ordered execution of said judgment stayed for period of ten (10) days and that in the meantime, defendant go at large upon bond in sum of [19] Five Thousand (\$5,000.00) Dollars. Further ordered that in default of such bond, said defendant stand committed and that commitment issue.

Defendant Ray Croxall was present in Court in custody of the U. S. Marshal, and after hearing defendant and Mr. Fink, the Court ordered that the judgment heretofore entered herein against said defendant Ray Croxall, on April 20, 1923, be and the same is hereby vacated, set aside and held for naught. Further ordered that said defendant Ray Croxall, for offense of which he stands convicted herein, be imprisoned for period of six (6) months in the County Jail, County of San Francisco, State of California, and that said defendant

stand committed to custody of U. S. Marshal to execute said judgment of imprisonment, and that a commitment issue. [20]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,169.

THE UNITED STATES OF AMERICA

vs.

GUSTAVE JOHNSON, et al.

Judgment on Verdict of Guilty.

Grove J. Fink, Esq., Assistant United States Attorney, and the defendant with his counsel came into Court. The defendant was duly informed by the Court of the nature of the indictment filed on the 27th day of March, 1923, charging him with the crime of viol. Act of Dec. 17, 1914, as amended Feb. 24, 1919, known as Harrison Narcotic Act; of his arraignment and plea of not guilty; of his trial and the verdict of the jury on the 20th day of April, 1923, to wit:

“We, the Jury, find as to the defendant at the bar as follows: Gustave Johnson—Guilty as charged.

B. P. ANDERSON,

Foreman.”

The defendant was then asked if he had any legal cause to show why judgment should not be entered

herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in arrest of judgment; THEREUPON the Court rendered its judgment; THAT, WHEREAS, the said Gustave Johnson having been duly convicted in this Court of the crime of viol. Act of Dec. 17, 1914, as amended Feb. 24, 1919;

IT IS THEREFORE ORDERED AND ADJUDGED that the said Gustave Johnson be imprisoned for the period of three (3) years and six (6) months in the United States Penitentiary at McNeil Island, State of Washington.

Judgment entered this 28th day of April, A. D. 1923.

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk. [21]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 13,169.

UNITED STATES OF AMERICA

vs.

GUSTAVE JOHNSON and RAY CROXALL.

(Certificate to Judgment-Roll.)

I, Walter B. Maling, Clerk of the United States
District Court for the Northern District of Cali-

fornia, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

Attest my hand and seal of said District Court this 28th day of April, 1923.

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk. [22]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 13,169.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUSTAVE JOHNSON,

Defendant.

Stipulation and Order Extending Time to and Including June 7, 1923, to Settle Bill of Exceptions.

It is hereby stipulated by and between counsel for the above-mentioned parties that the defendant may have to and including the 7th day of June, 1923, in which to lodge and settle his proposed bill of exceptions upon order allowing a writ of error to the United States Circuit Court of Appeals, in and for the Ninth Circuit.

Dated this 8th day of May, 1923.

GROVE J. FINK,
Asst. United States Attorney.
EDWARD A. O'DEA,
Attorney for Defendant.

So ordered.

Dated this 8th day of May, 1923.

PARTRIDGE,
United States District Judge.

[Endorsed]: Filed May 8, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [23]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,169.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

GUSTAVE JOHNSON,
Defendant.

Stipulation and Order Extending Time to and Including June 30, 1923, to Settle Bill of Exceptions.

It is hereby stipulated by and between counsel for the above-mentioned parties that the defendant may have to and including the 30th day of June, 1923, in which to lodge and settle his proposed bill

of exceptions upon order allowing a writ of error to the United States Circuit Court of Appeals, in and for the Ninth Circuit.

Dated this 7th day of June, 1923.

J. T. WILLIAMS,
United States Attorney.
EDWARD A. O'DEA,
Attorney for Defendant.

So ordered.

Dated this 7th day of June, 1923.

VAN FLEET,
United States District Judge.

[Endorsed]: Filed Jun. 7, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[24]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,169.

UNITED STATES OF AMERICA, .

Plaintiff,

vs.

GUSTAVE JOHNSON,

Defendant.

Stipulation and Order Extending Time to and Including July 28, 1923, to Settle Bill of Exceptions.

It is hereby stipulated by and between counsel for the above-mentioned parties that the defendant

may have to and including the 28th day of July, 1923, in which to present and settle his proposed bill of exceptions upon a writ of error to the United States Circuit Court of Appeals, in and for the Ninth Circuit.

It is hereby further stipulated that the time to present and settle the bill of exceptions of said defendant upon writ of error herein be extended and continued from the present March, 1923, Term to and into the next succeeding, July, 1923, Term of this Court.

Dated this 29th day of June, 1923.

JOHN T. WILLIAMS,
S.

United States Attorney.
EDWARD A. O'DEA,
Attorney for Defendant.

So ordered.

Dated this 29th day of June, 1923.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed Jun. 29, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[25]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,169.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUSTAVE JOHNSON,

Defendant.

Stipulation and Order Extending Time to and Including August 27, 1923, to Settle Bill of Exceptions.

It is hereby stipulated by and between Counsel for the above-mentioned parties that the defendant may have to and including the 27th day of August, 1923, in which to settle and present his bill of exceptions, upon a writ of error to the United States Circuit Court of Appeals, in and for the Ninth Circuit.

It is hereby further stipulated that by order of the Court made and entered on the 29th day of June, 1923, that the time to settle said bill of exceptions had been extended and continued from the March term into the next succeeding July term of this Court.

Dated this 27th day of July, 1923.

JOHN T. WILLIAMS,
United States Attorney.

EDWARD A. O'DEA,
Attorney for Defendant.

So ordered.

Dated this 28th day of July, 1923.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed Jul. 28, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[26]

In the Southern Division of the United States District Court for the Northern District of California.

No. 13,169.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

GUSTAVE JOHNSON,
Defendant.

Bill of Exceptions.

BE IT REMEMBERED, that heretofore, the Grand Jury of the United States in and for the Northern District of California, First Division, did find and return into and before the above-entitled Court its indictment against the defendants, Gustave Johnson and Roy Croxall, and that, thereafter, the said Gustave Johnson and Roy Croxall appeared in Court and upon being called to plead to said indictment filed a demurrer to said indictment as shown by the record herein and the said demurrer being overruled by the said Court, the defendant, Gustave Johnson, pleaded not guilty and the defendant, Roy Croxall, pleaded guilty as shown by the record herein;

AND BE IT FURTHER REMEMBERED, that the defendant, Gustave Johnson, who will hereafter be called the defendant, having duly pleaded not guilty, and the cause being at issue, the same came on for trial before the Honorable John S. Partridge, District Judge of said Court, and a jury duly impaneled, the United States being represented by Grove L. Fink, Esq., Assistant United States Attorney, and the defendant being represented by Edward A. O'Dea, Esq., and the following proceedings were had:

Grove L. Fink, Esq., Assistant United States Attorney made an opening statement of the case to the jury. The plaintiff to maintain the issues on its part to be maintained, introduced and offered in evidence the following testimony, to wit: [27]

Testimony of M. E. Dowell, for the Government.

M. E. DOWELL, called for the United States, being sworn, testified as follows:

Direct Examination.

I am a police officer assigned to the Detective Bureau of San Francisco, California. I have been in the police department fourteen years and ten months and was a police officer on the 23d day of March. I know the defendant, Gustave Johnson. I saw him on March 23, 1923, at the Detective Bureau of San Francisco at twelve o'clock noon. Mr. Croxall, a codefendant, was there also. From the police station, Croxall, Johnson, Police Officer Frederickson and myself went to 882 Fulton Street,

(Testimony of M. E. Dowell.)

San Francisco, California, where the defendant, Johnson, said he resided, said it was his place, and Frederickson and I searched the premises.

At this point Mr. O'Dea obtained permission to cross-examine the witness on his right to search the residence of the defendant, Gustave Johnson, and in response to his questions the witness testified as follows:

I did not have a search-warrant to enter the premises. I made no application for a search-warrant. Mr. Johnson requested that we go out there. I had no information before I went out there that the defendant was engaged in the traffic of selling narcotics. I did not go out there to search for narcotics. We had information that a theft had been committed and the number of a certain automobile was registered in the theft and the defendants, Johnson and Croxall, were seen getting into this car, the two defendants were arrested on Fulton Street in possession of this car and were brought into the Detective Bureau for investigation, and Detective Frederickson and myself were assigned to this case. We went out there to see what he had in the place, as he had denied the charge of having committed any theft of any kind and requested that we go with him to the house where he lived. He gave us permission to go out there to search [28] for articles we thought were stolen and nothing was said in regard to narcotics.

(Testimony of M. E. Dowell.)

Exception No. 1.

Mr. O'DEA.—I make a formal motion at this time that any evidence taken by means of the search of the police officers of this man's house without either a State, or National or Federal search-warrant be excluded, and for the reason that the man is compelled to testify against himself.

The COURT.—The motion will be denied.

Mr. O'DEA.—Exception.

At this point, the direct examination was resumed and the witness testified further, as follows:

Upon arriving at 882 Fulton Street in this city, county and State, we went into the premises there and there were two rooms that he occupied with Mr. Croxall and a woman that he claimed to be living there with as his wife. I found a trunk there which was locked and I asked Mr. Johnson who the trunk belonged to and he said "It belongs to me." We tried to get into the trunk but it was locked and in a few minutes Mr. Johnson said, "Do not break the trunk open. I will give you the key." So Johnson gave me the key, I opened the trunk, and in the top drawer of the trunk I found a can and picking up the can I saw it was an ounce can which contained morphine. I asked Mr. Johnson what it was and he said it was morphine. I asked him who it belonged to and he said "It belongs to me." Detective Frederickson, Croxall, Johnson and myself were present. I conducted a

(Testimony of M. E. Dowell.)

further search of the premises. I searched a bureau drawer which was in the front room where Johnson was and I found a number of needles. Johnson admitted that they belonged to him, and in a room in the rear where Johnson and Croxall were sitting I found another ounce can, another ounce morphine can, and Johnson admitted that that belonged to him and it had contained morphine, and that he had used it and that he bought the morphine up [29] north. In the room that was occupied by Croxall, Johnson told me to look on the shelf. He said that I would find the needle and syringe that was used in taking the shots of morphine and I searched there and found it as he stated. The can is now in the same condition as I found it, save and except for a sample was taken from it for analysis. It did not have any stamps on it of any kind. I took them to the police station and booked them in the Property Clerk's office as evidence against the defendants.

Exception No. 2.

Mr. FINK.—I ask your Honor at this time that the larger of the two cans, the one which will be shown to contain morphine, be marked for identification Government's Exhibit No. 1. I ask that the smaller of the two cans be at this time introduced in evidence and marked U. S. Exhibit No 2.

Mr. O'DEA.—I object to the introduction of any of this evidence at this time on the ground that it was taken in violation of the defendant's rights

(Testimony of M. E. Dowell.)

guaranteed to him under the Fourth and Fifth Amendments to the Constitution of the United States, and under Sections 13 and 19 of Article I of the Constitution of the State of California.

The COURT.—Overruled.

Mr. O'DEA.—Exception.

On cross-examination the witness testified as follows:

I had no evidence that the defendant, Johnson, was peddling narcotics. I charged the defendant with a violation of the State Poison Law. He is no longer charged with that offense. I requested that it be dismissed. I talked the matter over with the Captain of Detectives and he requested that the matter be turned over to the Government. I do not know why the man (Johnson) was turned over to the Government instead of being prosecuted by the State authorities, no more than the orders of the Captain. It is not a fact that I brought Johnson from the [30] State Court where he was charged, to this Court, because he would be dealt with more leniently in the State Court.

Exception No. 3.

Mr. O'DEA.—Do you know what the punishment is for a violation of the State Poison Law, where mere possession is charged, the first offense?

Mr. FINK.—That is objected to.

The COURT.—You have no right to ask that. You needn't answer that, Mr. Dowell.

(Testimony of M. E. Dowell.)

Mr. O'DEA.—You made no attempt to prosecute him in the State Court for this offense?

Mr. FINK.—Objected to as having been already asked and answered.

The COURT.—Sustained.

Mr. O'DEA.—Exception.

Johnson stated that he had been a user of narcotics. He said that to me at the time of the arrest. He requested that I give him permission to take a shot of morphine. Mr. Johnson had the keys before we went out to 882 Fulton Street. When I went to the premises at 882 Fulton Street I did not see any other person there besides Croxall and Johnson. Officer Frederickson was with me. Mrs. Dexter was not there with us; she was at the Detective Bureau being detained there at that time. It is not a fact that Mrs. Dexter handed me the keys and that I brought them out there. The defendant, Johnson, did not have the finger-stall of morphine on him. Croxall did. I did not see the defendant, Johnson, give the defendant, Croxall, the finger-stall of morphine. Johnson did not give the finger-stall of morphine to Croxall in my presence. The finger-stall of morphine was found on the other defendant, Roy Croxall, when he was searched in the City Prison.

It is not a fact that I might have gotten the keys from somebody else. Johnson was handcuffed. We had Johnson and [31] Croxall handcuffed together in the room, and Johnson requested us not to break the trunk open, that he had the keys and

(Testimony of M. E. Dowell.)

he raised up off the chair and went through his clothes and got the keys, and threw them across to me, a distance of probably ten feet. I would not say positively as to what I did with the keys but to the best of my recollection they were given back to Johnson. I did not give the keys back to Mrs. Dexter. I would not want to state positively that I did not give her the keys but to the best of my recollection I gave the keys back to Johnson at his home. I do not remember which one of Johnson's pockets he got the keys from. I did not find any stolen goods at 882 Fulton Street. I did not charge the defendant with having stolen goods. When the defendant, Johnson, admitted the possession of the narcotics he was handcuffed. I did not tell him it would be better for him to tell the truth concerning the narcotics. He requested that I not arrest him for the narcotics nor book him for the narcotics. He made the remark when he said that the narcotics was morphine "You are not going to charge me with that, are you?"

Testimony of A. A. Elliott, for the Government.

A. A. ELLIOTT, called for the United States, being sworn, testified as follows:

Direct Examination.

My occupation is narcotic inspector. Internal Revenue Service, Narcotic Division. I have been in that service four years in May. This wrapper which contains two cans has been in my possession.

(Testimony of A. A. Elliott.)

I first got them at the property clerk's office down at the Hall of Justice. After I got them there, I immediately brought them to our office, took out sample and wrapped them up in this paper and turned them over to Mr. Writesman, of the Department, to put them in the vault. I took the samples to the chemist, the larger of the two cans is now in the same condition as it was when I first received it. There were no stamps of any kind. I got the cans on the morning of the 24th. [32]

Testimony of R. F. Love, for the Government.

R. F. LOVE, called for the United States, being sworn, testified as follows:

Direct Examination.

My occupation is Internal Revenue Chemist. I have been an Internal Revenue Chemist for five years. I am stationed at San Francisco, California (Counsel for the parties stipulated that Mr. Love was a qualified chemist in the employ of the United States Government). The envelope containing two small packages Mr. Elliott brought to me. I identified the two small packages as follows: One is labeled "taken from finger-stall found on Croxall"; the other is labeled simply "taken from can found in room at 882 Fulton Street." I made a chemical analysis of both. I can state the contents of the small packages. The contents contained morphine. Morphine is a derivative of opium.

Mr. FINK.—I ask that this envelope containing the two small packages of morphine be introduced

(Testimony of Otto Frederickson.)

in evidence and marked United States Exhibit No. 3. I ask at this time that Government's Exhibit 1 for identification be introduced in evidence and given the same number. (Government's Exhibit 1 for identification was here marked Government's Exhibit 1.)

Mr. O'DEA.—I object to the introduction of the finger-stall against the defendant, Johnson, as immaterial, irrelevant and incompetent, upon the further ground that no connection has been shown between Johnson and that finger-stall. (Finger-stall contained morphine.)

The COURT.—I will sustain the objection.

Exception No. 4.

Mr. O'DEA.—I will object to the introduction of the can of morphine on the ground that it was taken in violation of the defendant's rights guaranteed to him under the Fourth and Fifth Amendments to the Constitution of the United States. [33]

The COURT.—The objection will be overruled.

Mr. O'DEA.—Exception.

Testimony of Otto Frederickson, for the Government.

OTTO FREDERICKSON, called for the United States, being sworn, testified as follows:

Direct Examination.

My occupation is a police detective, at the Hall of Justice, San Francisco. I am connected with the Police Department of the City and County of San

(Testimony of Otto Frederickson.)

Francisco and have been such for sixteen years next July. I was a police officer on March 23, 1923. I only know the defendant, Gustave Johnson, from having seen him once before. I know the defendant, Ray Croxall, only from having seen him one day. I saw Gustave Johnson on March 23, 1923. The defendant, Johnson, and Croxall were brought to the Hall of Justice on a larceny charge. From the Hall of Justice, we took Johnson and Croxall to 882 Fulton Street, in this City, county and State. There were four of us, Croxall, Johnson, Officer Dowell and myself. Upon arriving at 882 Fulton Street we went into the premises to make a search for evidence on a larceny investigation. We found nothing on the outside, that is, on any of the shelves to connect them with what we were looking for in regard to the larceny charge. We asked them about a certain trunk there was in the front room. Dowell asked "Who does the trunk belong to?" Johnson said "To me." Dowell said "What is in the trunk?" Johnson said "Clothes and other effects. It is locked. I have got the key here for it. I will unlock it." So Dowell opened the trunk and after looking through the clothes and stuff, he took out a can which was about half full.

Exception No. 5.

Mr. O'DEA.—At this time, I want to interpose an objection to any of this testimony on the ground that an illegal search and seizure was made in violation of the defendant's rights under the Fourth and Fifth Amendments to the Constitution of the

(Testimony of Otto Frederickson.)

United [34] States and under Sections 13 and 19 of Article I of the Constitution of the State of California.

The COURT.—The objection is overruled.

Mr. O'DEA.—Exception.

Witness continuing, testified: On taking out the can Dowell says, "Why that is morphine" and he admitted that it was. Defendant Johnson admitted that it was morphine. Dowell asked, "Are you selling this stuff?" and he said, "I have got that for my own use." We asked him how long it would take him to use that amount he had left and he said, "I am off the stuff now, I only use a very small amount of it, probably it will take six months to a year to use." We conducted a further search of the premises and we found some hypodermic needles. They were not complete, so Detective Dowell asked defendant, Johnson, where the remaining portion of them were, and he said, "You will find them under the dish rag in the kitchen"; that was the room occupied by Croxall. We found one other can in the kitchen. He said that the can belonged to him and it also had contained morphine. There were no Federal officers or employees with us when conducting the search at 882 Fulton Street.

Exception No. 6.

Mr. FINK.—I hand you Government Exhibits Nos. 1 and 2, in evidence, which were formerly contained in that wrapper, and ask you whether these are the cans that you found at that time and place?

(Testimony of Otto Frederickson.)

Mr. O'DEA.—We will object to that question, if your Honor please on the grounds already suggested.

The COURT.—Overruled.

Mr. O'DEA.—Exception.

The cans are similar to these; there were two; there was a little difference in the size of them. There were no stamps on them; they are in the same condition now that they were in at the time I took them save and except, of course, a sample being taken [35] from the larger of the two cans.

On cross-examination, the witness testified as follows:

We looked for stamps on the cans; the cans were open; they had no visible stamps. We did not have a search-warrant. We left the police station somewhere along about 12:30 or 12:40. At the time there were a number of Police Judges and Superior Judges in the Hall of Justice. I had the opportunity to procure a search-warrant if I thought it necessary. I do not know how it happened that the narcotics were turned over to the Federal Government. I do not know who swore to the complaint against the defendants. I did not accompany Detective Dowell into Captain Matheson's office. I made the casual remark to Captain Matheson that we had found some morphine at the place. In the first place, Johnson and Croxall were brought to the Hall of Justice by Officer Tierney and Officer Kreegan. They had arrested them without a warrant on suspicion on a larceny charge and turned the de-

(Testimony of Otto Frederickson.)

endants over to us for investigation. As soon as they brought them to the Hall of Justice we immediately went out in a machine driven by Johnson at his own solicitation. I went into the premises to search for stolen goods and to investigate the premises. We did not find any stolen goods. We looked through all the rooms. When we were there we wanted to see the trunk. It was locked. I saw Detective Dowell get the key. He got it from Johnson. Of that, I am positive. There was no woman there. There was a woman down at the Hall of Justice. She was not under suspicion. The woman was brought down because she was with them when they were apprehended through the license number on the automobile which belonged to her. I do not know whether she is an addict or uses morphine. She lived at 882 Fulton Street with Johnson. Her last name is Dexter. I did not get the keys from her. The keys for the machine were not given to me in the Hall of Justice. Johnson had the keys because Johnson drove the machine out there. We did not search Johnson's person for stolen goods. Johnson volunteered the keys for the trunk. I did not open the [36] trunk. I saw it opened. Dowell was making the search of the trunk. I saw some clothes. Women's wearing apparel, among other things, and Officer Dowell found that can and said, "This is morphine." I did not examine the trunk to see any male wearing apparel there. I did not notice any wearing apparel of Johnson's in that trunk. I had no information that Johnson was en-

(Testimony of Otto Frederickson.)

gaged in the traffic of narcotics. Johnson had no other conversation with us at 882 Fulton Street than that the can belonged to him; that it contained morphine and that he was a user himself. At the time Croxall was sitting handcuffed to Johnson.

On redirect examination, the witness testified as follows:

When the two officers from Bush Street Station brought Johnson and Croxall to the Station, it was in regard to a larceny that had been committed, an attempted larceny on a fellow named Cross George on Laguna and Post Streets and the number of the automobile had been obtained from which the officers located the defendants at 882 Fulton Street. They were then brought to the Bureau. The case had been assigned to us for investigation. That is how we came to go to 882 Fulton Street.

On recross-examination, the witness testified as follows:

In the rooms, there was one trunk that was opened and there was another steamer trunk. I think there was a big suit case in Croxall's room. I don't know whether there were more trunks or not. I would not be positive that there were two trunks and a suit case. One was locked, that is the one that Detective Dowell got the key from Johnson for. I did not see the contents of the second trunk. I did not ask for the keys for the trunk. I had the possession of the keys to drive the machine. I drove the machine back. I believe that was the same key ring

(Testimony of Otto Frederickson.)

as that which you (O'Dea) have in your hand. I'm not sure whether all of these keys were on the ring at the time. I got the key ring from Detective Dowell. I did not return the keys to the defendant, Johnson.

At this point, Mr. Fink announced, the Government rests. [37]

Exception No. 7.

Mr. O'DEA.—I would ask, if your Honor please, for a directed verdict of not guilty upon the ground that the evidence is insufficient to substantiate the charge; 2d, the defendant is charged with possessing a can of morphine and possessing a finger-stall of morphine, and there is no evidence at all here to connect the defendant up with the finger-stall of morphine and on the further ground that any and all evidence that was received here was taken in violation of the defendant's Constitutional rights.

The COURT.—The motion is denied.

Mr. O'DEA.—Exception.

That thereupon, the defendant, Johnson, to maintain the issues on his part to be maintained, introduced and offered in evidence the following testimony, to wit:

Testimony of Gustave Johnson in His Own Behalf.

GUSTAVE JOHNSON, called in his own behalf, being sworn, testified as follows:

Direct Examination.

I live at 882 Fulton Street. I am addicted to the

(Testimony of Gustave Johnson.)

use of narcotics ever since I was operated on in 1908 and had the end of my spine cut off. I have been in San Francisco since last January. I never sold narcotics. I am not a dealer in narcotics. I was not present when these keys were given to the officers. I drove the machine out to the house at 882 Fulton Street, then we went into the house and they handcuffed us. We went into the front room of Mrs. Dexter at that time. I saw the police officer search the trunk. The trunk was Mrs. Dexter's. There were two trunks in that place, a wardrobe trunk and a flat trunk. The wardrobe trunk belonged to Mrs. Dexter. I had a suit hanging in the closet and some shirts and underwear and neckties and things like that. I did not give them the keys to open that trunk. I gave them the keys that would open one drawer, the top [38] drawer of the wardrobe trunk. It was on a little brass ring with the key to the front door, two keys. I did not own the finger-stall of morphine.

On cross-examination, the witness testified as follows:

I saw the trunk searched. When he opened it he pulled out a pillow and some towels, some two or three hundred pieces, little square pieces of different colored cloth that she was making what they call a crazy-quilt and some sheets and pillow cases. There was no wearing apparel then in that flat bottom trunk that had the morphine in it. None whatever. There was, however, this can in it. There were no

(Testimony of Gustave Johnson.)

men's shirts or men's pants or trousers in it. I did not see any can taken out. I had my back to him. He walked over in front of the dresser and held it up and made the remark, "Here it is." He said it was morphine and I said, "I guess it is." I said it belonged to me. This other can was found out in the kitchen, in the room of Mr. Croxall. I do not remember having any conversation about the smaller of the two cans. I do not remember saying that the smaller can belonged to me and that I had morphine in it. The can with the morphine in it, I said that was mine. I have been convicted of a felony in 1910, at Oakland, California. The offense was grand larceny and the judgment of the Court was six years in San Quentin. I drove the car from the police station to 882 Fulton Street. When I went into the police station from the car the engine was turned off. It required a key to start it. I did not have the key. I got the key from Mr. Dowell. Mr. Dowell got them from the officer who made the arrest who first came to the house from the Bush Street Station. I believe that he handed them to Mr. Frederickson who was sitting in the front with me and I took them from him and stuck it in the keyhole. I started the car. I opened the front door with the key that I had. There were two keys for the car. Mrs. Dexter had one on a ring and I had one separate.

On redirect-examination, the witness testified as follows: [39]

I do not remember from whom the police officer

(Testimony of Gustave Johnson.)

got the keys to open the trunk. When we first got down to the Hall of Justice I went to lock the tool box on the car and the officer who was sitting in the front seat with me had the keys. I don't know what his name is. It was one of the two officers that came with us. It was not Officers Dowell or Frederickson.

Testimony of Matt Tierney, for the Defendant.

MATT TIERNEY, called in behalf of the defendant, Gustave Johnson, being sworn, testified, as follows:

Direct Examination.

I am a police officer of the city and county of San Francisco. I am detailed to the Bush Street Station. I know Gustave Johnson. I knew him on the 23d day of March, 1923. I saw another gentleman with Mr. Johnson and a lady. I got two keys from Mrs. Dexter that day, as we were about to leave the place and lock up. I turned the keys over to Detective Dowell and Detective Frederickson up at the Detective Bureau at the Hall of Justice.

On cross-examination, the witness testified as follows:

I got the keys from Mrs. Dexter. There were two keys there, one to the front door and one to the room door. They were not on a ring. I did not get any keys from Mr. Johnson.

Testimony of Mrs. Marion Dexter, for the Defendant.

MRS. MARION DEXTER, called in behalf of the defendant, Gustave Johnson, being sworn, testified as follows:

I know the defendant, Gustave Johnson. I was present when Mr. Johnson was arrested. I saw the police officers at the time. I gave one of the officers a bunch of my keys to 882 Fulton Street at the house just as I was leaving the rooms.

On cross-examination, the witness testified, as follows:

I was living at 882 Fulton Street in two rooms in the front, occupied by Mr. Johnson, Mr. Croxall and myself. I am [40] not the wife of Mr. Johnson. I think that there were more than two keys on the bunch, three or four, I think. They were on a key ring.

Testimony of Gustave Johnson, in His Own Behalf (Recalled).

GUSTAVE JOHNSON, recalled in his own behalf, being sworn, testified as follows:

Direct Examination.

I never imported any narcotics into the country. I never manufactured any narcotics. I never produced any narcotics. I never compounded any narcotics. I never sold any. I never dealt in any narcotics. I never dispensed a narcotic. I never gave

(Testimony of Gustave Johnson.)

any narcotics away. I had in my possession certain narcotics. I had them for my own use. I had been addicted to the use of narcotics ever since I had my spine cut off, since 1908, fifteen years. I did not give the police officers permission to enter my premises.

On cross-examination, the witness testified as follows:

I don't remember just when it was in 1908 that I had that operation. I don't remember the month. I was in Los Angeles along the first part of the summer of the year 1908 and I came up to San Francisco. I think it was in May. It was shortly after May, 1908, that I was taken with a pain from the base of my brain to the end of my spine and I went along with a pain for two months before the doctors discovered a formation on the end of my spine and I was operated on and the end of my spine cut off, of which I can show you the scar.

Exception No. 8.

Mr. FINK.—Mr. Johnson, I just want you to use the best recollection you can; I know that is all you can do, and state to me just exactly what month, as near as you can remember it, you had the operation. I think it is important.

Mr. O'DEA.—We object to that on the ground that it is immaterial, if your Honor please. Perhaps Mr. Fink is going to [41] refer to the conviction of a felony, again, and the defendant has already admitted that.

(Testimony of Gustave Johnson.)

The COURT.—Overruled.

Mr. O'DEA.—Exception.

ANSWER.—I think it was in September or October, as near as I can remember.

Exception No. 9.

Mr. FINK.—Well, now, for the purpose of refreshing your recollection, and that only do you know where you were from May until November, in the year 1908?

Mr. O'DEA.—If your Honor please, that is not a proper impeaching question. If that question is asked for the purpose of impeachment, the proper question to ask was he ever convicted of a felony. This is the defendant on the stand, and he is not like any other witness. He has admitted that he has been convicted of a felony.

The COURT.—The objection is overruled.

Mr. O'DEA.—Exception.

ANSWER.—I was between Oakland and my mother's home. I was not out of the state.

On redirect examination, the witness testified as follows:

In 1908, I was addicted to the use of narcotics and I am now.

Exception No. 10.

Mr. O'DEA.—If your Honor please, I move that all of the evidence pertaining to the search of the defendant's premises be stricken out on the ground that whatever was taken was taken in violation of the defendant's Constitutional rights.

The COURT.—I will state, Mr. O'Dea, that I have studied this matter quite carefully both in these cases and others, and I am satisfied that the motion should be denied.

Mr. O'DEA.—Exception. [42]

That, thereupon, the defendant rested.

Exception No. 11.

Mr. O'DEA.—If your Honor please, at this time, I desire to make a motion for a directed verdict, first upon the ground that the evidence was illegally seized, second, that the indictment does not state any public offense, third that the evidence is insufficient to convict the defendant.

Mr. O'DEA.—The indictment charges the defendant with having in his possession certain derivatives of opium, to wit, one can of morphine and a finger-stall containing 194 grains, he being a person required to register and not having paid the tax. Now, the defendant to be specific is charged under Section VIII of the Harrison Narcotic Act, "That it shall be unlawful for any person not registered under the provisions of this Act, to have in his possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section, and also of a violation of the provisions of Section 1 of this Act."

The COURT.—What page is that on?

Mr. FINK.—Page 16, your Honor, of the Regulations, Section 8.

Mr. O'DEA.—Now, Section 1 enumerates certain classes of people—"That or or before July first in each year every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away opium or coca leaves, or any compound, manufacture, salt, derivative or preparation thereof, shall register with the Collector of Internal Revenue." In this connection, I call your Honor's attention to the fact that there is absolutely no evidence that this person imported, manufactured, produced, compounded, sold, dealt in, dispensed or gave away opium or coca leaves, or their derivatives. Those are the persons who are required to register, the persons who import, manufacture, produce, compound, sell, deal in, dispense, or give away narcotics. I call your Honor's attention to the case of *Gin Foo* [43] *Moy*, 241 U. S. 394. The opinion is a very short one, and I will read it to your Honor. (Reads) . . . There is no evidence, if your Honor please, that the defendant is charged with being a dealer, nor is he charged with being a person required to register. There is not a scintilla of evidence that he had ever dealt in narcotics, that he ever sold any, that he ever compounded any, that he ever produced any, or that he gave them away. The only evidence in the case is that the man has been a user of narcotics, and that he had narcotics in his possession, which he says were for his own use, and he is charged not with producing it. There is no evidence here that he was a person required to pay any tax; he is not charged with being a per-

son producing, compounding, selling, dealing in, dispensing or giving away narcotics. The evidence before your Honor is that he is not a dealer, and, therefore, he is not a person required to register under the act.

Mr. FINK.—Your Honor, unless I misread the case of United States vs. Wong Wing, I think the matter presented by Mr. O'Dea is settled by that decision. However, it is to be noted that Section 8 of the Harrison Narcotic Act specifically provides for all of the provisions of Section 1 of the Act, and while Mr. O'Dea has pointed out a portion of Section 1 of the Act to your Honor, he has carefully refrained from pointing out another portion of Section 1 which reads: "It shall be unlawful for any person to purchase, sell, dispense or distribute any of the aforesaid drugs except in the original stamped package, or from the original stamped package; and the absence of appropriate tax paid stamps from any of the aforesaid drugs shall be *prima facie* evidence of a violation of this section by the person in whose possession same may be found; and the possession of any original stamped package containing any of the aforesaid drugs by any person who has not registered and paid special taxes as required by this section shall be *prima facie* evidence of liability to such special tax." [44]

I point out to your Honor that the Moy decision was rendered by the Supreme Court prior to the Amendment of February 24, 1919, and that in the meantime the case of United States vs. Wong Wing covers the point directly in question here.

Mr. O'DEA.—It has not overruled the decision in the case that I cited to your honor.

The COURT.—I have listened to you because you seemed very earnest about it. I have had occasion to study and consider this matter four or five times in the last few weeks and I am perfectly clear that Section 8, which provides that it is unlawful for any person to have opium in their possession except under special circumstances, and certain special classes of persons. The motion will therefore be denied.

Mr. O'DEA.—I note an exception.

(That, thereupon counsel proceeded to argue the case, at the conclusion of which the following proceedings were had.)

Charge to the Jury.

The COURT. (Orally.)—Gentlemen of the Jury: In this case the indictment is against two men, Gustave Johnson and Ray Croxall. Ray Croxall has pleaded guilty and is, therefore, out of the case. In determining and considering your verdict you are not in any wise to consider the fact that Croxall has pleaded guilty. The police officers here have testified that they went to the house of the defendant, Johnson, at his request and upon his invitation. The defendant, Johnson, denies that. If you find from the evidence beyond a reasonable doubt that the defendant, Johnson, did invite the officers to go there, then I instruct you that under the law which is presented herein evidence is properly before you and is to be considered by you. If you

find, on the contrary, that the defendant did not invite the officers to go there, then you are not entitled to take into consideration the material object presented here, namely, the can of morphine. [45]

The statute under which this indictment is brought makes it a crime for any person to have morphine in his possession, except certain persons who have registered and paid the tax. The statute also provided that the possession of morphine is *prima facie* evidence that he has not registered and has not paid the tax. Therefore, if the Government has established to your satisfaction that the defendant did have this morphine in his possession, then it was incumbent upon the defendant to overcome that *prima facie* showing by proving that he had registered and had paid the tax. He has offered no such evidence in this case, and there is no pretense of any such thing.

The presumption of innocence which attaches to every person charged with a crime follows at all deliberations and all stages of the case until it is finally determined by the whole twelve of the jury. This defendant, like all defendants, is entitled to that presumption. The Government, in order to overcome that presumption of innocence, must establish the possession of morphine by this defendant beyond a reasonable doubt.

There has been evidence introduced here, and an admission on behalf of the defendant, that he was convicted of a felony. You are not to consider that conviction of a felony for any but one purpose in this case, and that is as bearing upon the credibility

of the witness himself. For all other purposes you will eliminate it from your minds entirely.

Exception No. 12.

Mr. O'DEA.—I wish your Honor to give this instruction: "You are instructed that if you find from the evidence that the defendant, Gustave Johnson, was merely a consumer, a user or an addict to the use of narcotics and had the narcotics mentioned in the indictment in his possession for his own use and did not import, manufacture, produce, compound, sell, deal in, dispense or give away opium or coca leaves, or any compound, manufacture, salt, derivative or preparation thereof, then he was a person not required to register under the provisions of the Act and you [46] must return a verdict of "Not Guilty."

The COURT.—You have presented that instruction to me. That instruction is denied.

Mr. O'DEA.—Exception.

Exception No. 13.

Mr. O'DEA.—And also the first instruction that I have requested. Does your Honor know that one? Which said instruction was as follows: You are instructed that there is no presumption of law created in the Act of December 17, 1914, as amended February 24, 1919, which is superior to or overcomes the presumption of innocence with which the defendant is clothed from the time of his arrest to the end of the jury's deliberations.

The COURT.—I know it. Denied.

Mr. O'DEA.—Exception.

Exception No. 14.

Mr. O'DEA.—And also the fourth instruction that: It is not necessary under any law for the defendant to prove his innocence but the burden rests upon the prosecution to establish every element of the crime with which he is charged and every element of the crime must be established to a moral certainty and beyond all reasonable doubt. If the prosecution failed to establish to a moral certainty that the defendant was a person required to register and did not register under the provisions of the Act for the possession of the narcotics mentioned in the indictment then it is your duty to acquit the defendant. If the prosecution failed to establish to a moral certainty and beyond all reasonable doubt that the defendant had not paid the tax required for the possession of said narcotics then it is your duty to acquit the defendant.

The COURT.—Under the rule, Mr. O'Dea, all you have to do is to refer to the number of the instruction, where you have presented it in writing.

Mr. O'DEA.—The fourth instruction. (Just referred to.) [47]

The COURT.—Denied.

Mr. O'DEA.—Exception.

(Thereupon at 12:08 the jury retired, and at 12:12 returned into Court with a verdict of guilty as charged.)

Thereupon the said Court continued said case to the 28th day of April, 1923, for judgment.

Thereafter, on the 28th day of April, 1923, the day set by the Court for the pronouncement of sen-

tence upon the defendant, the defendant was called to the bar of the Court to show cause and asked to show cause, if any he had, why sentence should not be pronounced upon him according to law. Thereupon, the attorney for defendant, presented to the Court a motion for a new trial which motion for new trial was in words and figures following, to wit:

MOTION FOR NEW TRIAL

Now comes Gustave Johnson, defendant in the above-entitled cause, and by Edward A. O'Dea, Esq., his attorney, moves the Court to set aside the verdict rendered herein and to grant a new trial of said cause and for reasons therefor, shows to the Court the following:

I.

That the verdict in said cause is contrary to law.

II.

That the verdict in said cause was not supported by the evidence in the case.

III.

That the evidence in said cause is insufficient to justify said verdict.

IV.

That the Court erred upon the trial of said cause in deciding question of law arising during the course of the trial which errors were duly excepted to. [48]

V.

That the Court improperly instructed the jury to defendant's prejudice.

Dated at San Francisco, California, this 28th day of April, 1923.

GUSTAVE JOHNSON,
Defendant.

EDWARD A. O'DEA,
Attorney for Defendant, Gustave Johnson.

[Endorsed]: Filed April 28, 1923. Walter B. Maling, Clerk. C. W. Calbreath, Deputy Clerk.
Received Copy April —, 1923.

GROVE L. FINK,
Asst. U. S. Attorney.

Exception No. 15.

Said motion for new trial was argued by the attorney for the defendant and was submitted to the Court for its decision and after due consideration, the Court denied the motion for a new trial and the defendant then and there duly and regularly excepted.

Thereafter on the same day, Edward A. O'Dea, Esq., Attorney for the defendant presented to the Court a motion in arrest of judgment which motion was in the words and figures following, to wit:

MOTION IN ARREST OF JUDGMENT

Now comes the defendant, Gustave Johnson, and respectfully moves the Court to arrest and withhold judgment in the above-entitled cause and that the verdict of conviction of said defendant heretofore given and made in the said cause be vacated and set aside and declared to be null and void for each of the following causes and reasons:

I.

That the indictment on file herein does not charge or state facts sufficient to constitute a public offense under the laws of the United States against this defendant. [49]

II.

That said indictment improperly includes two offenses without alleging same in separate counts.

III.

That this Court has no jurisdiction to pass judgment upon the defendant by reason of the fact that said indictment on file herein does not state a public offense under the laws of the United States.

WHEREFORE, by reason of the premises the defendant prays this Honorable Court that the judgment herein be arrested and withheld and that the conviction of the defendant be declared null and void.

GUSTAVE JOHNSON,

Defendant.

EDWARD A. O'DEA,

Attorney for Defendant, Gustave Johnson.

[Endorsed]: Filed April 28, 1923. Walter B. Maling, Clerk. C. W. Calbreath, Deputy Clerk.

Received Copy, April —, 1923.

GROVE L. FINK,

Asst. U. S. Attorney.

Exception No. 16.

Said motion in arrest of judgment was argued by the attorney for the defendant and was submitted to the Court for its decision and after due consideration, the Court denied the motion in arrest of judgment.

ment and the defendant then and there duly and regularly excepted.

And thereupon, the Court rendered its judgment and sentence upon the defendant and granted to said defendant time in which to lodge and settle his proposed bill of exceptions; said time was granted and was extended by stipulation of the parties and orders of the Court to and including the 27th day of August, 1923.

The said defendant hereby presents the foregoing as his bill of exceptions herein and respectfully asks that the same be [50] allowed, signed and sealed and made a part of the record in this case.

Dated this 22d day of June, 1923.

EDWARD A. O'DEA,
Attorney for Defendant. [51]

In the Southern Division of the United States
District Court, in and for the Northern District
of California, First Division.

No. 13,169.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GUSTAVE JOHNSON,
Defendant.

Notice of Presentation of Bill of Exceptions.

To John T. Williams, United States Attorney and
Grove L. Fink, Assistant United States Attorney:

You will please take notice that the foregoing constitutes and is the proposed bill of exceptions of the defendant in the above-entitled cause, and the said defendant will apply to the said Court to allow said bill of exceptions and to sign and seal the same as the bill of exceptions herein.

EDWARD A. O'DEA,
Attorney for Defendant. [52]

In the Southern Division of the United States
District Court, for the Northern District of
California, First Division.

No. 13,169.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
GUSTAVE JOHNSON,
Defendant.

Stipulation Re Bill of Exceptions.

It is hereby stipulated and agreed that the foregoing bill of exceptions is correct and that the same may be signed, settled, allowed and sealed by the Court.

Dated this 30 day of July, 1923.

JOHN T. WILLIAMS,
United States Attorney.
EDWARD A. O'DEA,
Attorney for Defendant. [53]

In the Southern Division of the United States
District Court, for the Northern District of
California, First Division.

No. 13,169.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GUSTAVE JOHNSON,
Defendant.

Order Settling Bill of Exceptions.

This bill of exceptions having been duly presented to the Court within the time allowed by law and the rules of the Court and within the time extended by the Court by orders duly and regularly made, is now signed, sealed and made a part of the records in this case, and is allowed as correct.

- Dated this 31st day of July, 1923.

JOHN S. PARTRIDGE,
United States District Judge.

Service of the within bill of exceptions is hereby admitted this 30th day of July, 1923.

JOHN T. WILLIAMS,
United States Attorney.

[Endorsed]: Filed Jul. 31, 1923. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.
[54]

In the Southern Division of the United States
District Court, for the Northern District of
California, First Division.

No. 13,169.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUSTAVE JOHNSON,

Defendant.

Petition for Writ of Error and Supersedeas.

Now comes Gustave Johnson, defendant herein, by Edward A. O'Dea, Esq., his attorney, and says that on the 28th day of April, 1923, this Court rendered judgment and sentence against the defendant whereby he was adjudged and sentenced to imprisonment to wit: to be imprisoned for a term of three years and six months in the Federal Prison at McNeil's Island, State of Washington; that in the judgment and proceedings had prior thereto in this cause certain errors were permitted to the prejudice of the defendant all of which will more fully appear from the assignment of errors which is filed with this petition.

WHEREFORE, the defendant prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Cir-

cuit, for the correction of errors complained of, and that a transcript of the records in this cause, duly authenticated may be sent to the Circuit Court of Appeals aforesaid, and that the defendant be awarded a supersedeas upon said judgment and all necessary and proper process including bail.

G. A. JOHNSON,

Defendant.

EDWARD A. O'DEA,

Attorney for Defendant.

Due service of the within petition for writ of error and supersedeas is hereby admitted this 28th day of April, 1923.

UNITED STATES ATTORNEY.

GROVE J. FINK,

Asst. United States Attorney.

[Endorsed]: Filed Apr. 28, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[55]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 13,169.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUSTAVE JOHNSON,

Defendant.

Assignment of Errors.

Gustave Johnson, the plaintiff in error, and Edward A. O'Dea, Esq., his attorney, in connection with his petition for a writ of error makes the following assignment of errors which he alleges occurred upon the trial of said cause:

I.

The Court erred in overruling the demurrer to the indictment interposed by the plaintiff in error, the demurrer specifying particularly (1) That the indictment does not state facts sufficient to constitute an offense against the laws of the United States and particularly against the provisions of the Act of December 17, 1914, as amended February 24, 1919.

(2) That said indictment is uncertain in that it cannot be ascertained therefrom how defendants were persons required to register and pay a tax under the provisions of the Act of December 17, 1914 as amended February 24, 1919.

(3) That said indictment is uncertain because it cannot be ascertained therefrom whether the defendants are charged as being dealers in narcotics and required to register or whether they obtained the narcotics above mentioned from a registered dealer in pursuance of a prescription written for the legitimate medical use of defendants.

(4) That the said indictment is uncertain in that it cannot be ascertained therefrom why the defendants, or either [56] of them, were persons

required to pay the special tax provided for by the aforesaid Act on the said morphine.

(5) That said indictment is uncertain in that it cannot be ascertained therefrom whether the defendants had joint possession of the narcotics mentioned in the indictment or whether one defendant has possession of one can or morphine and the other defendant had possession of the finger-stall containing the morphine mentioned in said indictment.

(6) That said indictment is uncertain in that it cannot be ascertained therefrom whether the defendants, or either of them, are charged with possessing the narcotics mentioned in said indictment at the same time.

(7) That said indictment is uncertain in that it cannot be ascertained therefrom whether the Government charges one offense against the defendants or whether the Government is attempting to charge the defendants with two offenses in one count.

(8) That said indictment is uncertain in that it cannot be ascertained therefrom what connection, if any, the defendants had with each other, whether one was the agent of the other, or whether each was acting independent of the other, or whether they were acting under a partnership agreement.

To which ruling overruling said demurrer, the plaintiff in error, duly excepted.

II.

The Court erred in overruling the objection of plaintiff in error to the admission of evidence of a

certain quantity of morphine, said objection being based upon the ground that said morphine was seized as a result of a search of the plaintiff in error's home and a seizure therefrom of a quantity of morphine without any search-warrant, without authority of law, and in violation of the Constitutional rights guaranteed defendant under the Federal and State Constitutions to which rulings the plaintiff in error duly excepted. [57]

III.

The Court erred in denying the motions of the plaintiff in error to exclude from evidence the can of morphine and other evidence seized from the home of the plaintiff in error without a search-warrant, without any authority of law, in violation of plaintiff in error's Constitutional rights; said motion was made at the time of the introduction of said evidence and at the conclusion of all the evidence in the case. To which rulings the plaintiff in error duly excepted.

IV.

The Court erred in overruling the plaintiff in error's objection to the question asked plaintiff in error by the Government: "Do you remember what time in 1908 you had that operation?" "As a matter of fact, were you not in Los Angeles in May of 1908?" "Mr. Johnson, I just want you to use the best recollection you can; I know that is all you can do, and state to me just exactly what month, as near as you can remember it, you had the operation. I think it is important." "Well, now, for the purpose of refreshing your recollection, and that

only, do you know where you were from May until November, in the year 1908?"

To which rulings, the plaintiff in error duly excepted.

V.

The Court erred in denying the motion of plaintiff in error for a directed verdict of Not Guilty upon the ground that the evidence is insufficient to convict the defendant.

To which ruling, the plaintiff in error duly excepted.

VI.

The Court erred in denying the motion of plaintiff in error for a directed verdict of Not Guilty upon the ground that the indictment did not state any public offense.

To which ruling, the plaintiff in error duly excepted.

VII.

The Court erred in denying the motion of plaintiff in [58] error for a directed verdict of not guilty upon the ground that the evidence was insufficient to substantiate the charge that the defendant possessed a finger-stall of morphine.

To which ruling, the plaintiff in error duly excepted.

VIII.

The Court erred in refusing to give the following instruction requested by plaintiff in error:

"You are instructed that if you find from the evidence that the defendant, Gustave Johnson, was merely a consumer, a user, or an addict to the use

of narcotics and had the narcotics mentioned in the indictment in his possession for his own use and did not import, manufacture, produce, compound, sell, deal in, dispense or give away opium or coca leaves, or any compound, manufacture, salt, derivative, or preparation thereof, then he was a person not required to register under the provisions of the Act and you must return a verdict of "not guilty."

To the Court's refusal to give such instruction, plaintiff in error duly excepted.

IX.

The Court erred in refusing to give the following instruction requested by plaintiff in error:

"You are instructed that there is no presumption of law created in the Act of December 17, 1914, as amended February 24, 1919, which is superior to or overcomes the presumption of innocence with which the defendant is clothed from the time of his arrest to the end of the jury's deliberations.

To the Court's refusal to give such instruction, plaintiff in error duly excepted.

X.

The Court erred in refusing to give the following instruction requested by plaintiff in error:

"It is not necessary under any law for the defendant to prove his innocence but the burden rests upon the prosecution to establish every element of the crime with which he is charged [59] and every element of the crime must be established to a moral certainty and beyond all reasonable doubt. If the prosecution failed to establish to a moral certainty that the defendant was a person

required to register and did not register under the provisions of the Act for the possession of the narcotics mentioned in the indictment then it is your duty to acquit the defendant. If the prosecution failed to establish to a moral certainty and beyond all reasonable doubt that the defendant had not paid the tax required for the possession of said narcotics then it is your duty to acquit the defendant."

To the Court's refusal to give such instruction, plaintiff in error duly excepted.

XI.

The Court erred in denying the motion for new trial on behalf of defendant, in this

- (1) That the verdict in said cause is contrary to law.
- (2) That the verdict in said cause was not supported by the evidence in the case.
- (3) That the evidence in said cause is insufficient to justify said verdict.
- (4) That the Court erred upon the trial of said cause in deciding questions of law arising during the course of the trial which errors were duly excepted to.
- (5) That the Court improperly instructed the jury to defendant's prejudice.

To which ruling, the plaintiff in error duly excepted.

XII.

The Court erred in denying the motion in arrest of judgment on behalf of the plaintiff in error, in this

1. That the information on file does not charge or state facts sufficient to constitute a public offense under the Laws of the United States against this defendant.
2. That said indictment improperly includes two offenses without alleging same in separate counts. [60]
3. That this Court has no jurisdiction to pass judgment upon the defendant by reason of the fact that said indictment on file herein does not state a public offense under the laws of the United States.

To which ruling, the plaintiff in error duly excepted.

G. A. JOHNSON,

Defendant.

EDWARD A. O'DEA,

Attorney for Defendant.

Due service of the within assignment of errors is hereby admitted this 28th day of April, 1923.

UNITED STATES ATTORNEY.

GROVE J. FINK,

Asst. United States Attorney.

[Endorsed]: Filed Apr. 28, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[61]

In the Southern Division of the United States
District Court, for the Northern District of
California, First Division.

No. 13,169.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

GUSTAVE JOHNSON,
Defendant.

Order Allowing Writ of Error and Supersedeas.

The writ of error and the supersedeas herein
prayed for by Gustave Johnson, plaintiff in error,
pending the decision upon said writ of error, is
hereby allowed and the defendant is admitted to
bail upon the writ of error in the sum of Five Thou-
sand and No/100 (\$5,000.00) Dollars.

The bond for costs of the writ of error is hereby
fixed at the sum of \$250.00 for defendant.

Dated at San Francisco, California, this 28th
day of April, 1923.

JOHN S. PARTRIDGE,
United States District Judge.

Due service of the within order allowing writ of
error and supersedeas is hereby admitted this 28th
day of April, 1923.

United States Attorney.
GROVE J. FINK,
Asst. United States Attorney.

[Endorsed]: Filed Apr. 28, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [62].

Bond on Writ of Error.

#13,169.

United States of America.

Northern District of California,—ss.

KNOW ALL MEN BY THESE PRESENTS, that we Gustave Johnson as principal and National Surety Company and ————— as sureties, are held and firmly bound unto the *the* United States of America, in the sum of Five Thousand (\$5,000.-00) Dollars, to be paid to the said United States of America, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated the 28th day of April, in the year of our Lord, one thousand nine hundred and twenty-three:

THE CONDITION of the above recognizance is such, that, whereas, an indictment has been found by the United States Grand Jury for the Southern Division of the Northern District of California, and filed on the 27th day of March, A. D. 1923, in the Southern Division of the United States District Court for the Northern District of California, charging the said Gustave Johnson with Violation Act December 17, 1914 as amended (Harrison

Narcotic Act) committed on or about the 23d day of March, A. D. 1923, to wit: at the District and Division aforesaid; thereafter judgment and sentence was rendered made and entered and petition for writ of error granted;

AND WHEREAS, the said Gustave Johnson has been required to give a recognizance, with sureties, in the sum of Five Thousand (\$5,000.00) Dollars for his appearance before said United States District Court whenever required, and pending determination of writ of error;

NOW, THEREFORE, If the said Gustave Johnson shall personally appear at the United States Circuit Court of Appeals for the Ninth Judicial Court and Southern Division of the United States District Court for the Northern District of California, First Division, to be holden at the court-rooms of said Courts in the city and county [63] of San Francisco, on the 2—— day of when required, A. D. 192— at ten o'clock in the forenoon of that day, and afterwards whenever or wherever he may be required to answer the said indictment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said Courts without leave first obtained, and if he shall appear for judgment and render himself in execution thereof, then this recognizance

shall be void, otherwise, to remain in full effect and virtue.

G. A. JOHNSON. (Seal)

Address #1233 Pease Place, Alameda, California.

NATIONAL SURETY COMPANY, (Seal)

C. T. Hughes, (Seal)

By C. T. Hughes,

Its Attorney in fact.

Acknowledged before me the day and year first above written.

LYLE S. MORRIS, (Seal)

Deputy Clerk, U. S. District Court, Northern District of California.

Name and Address of Attorney for Defendant:

EDWARD O'DEA,

Address Phelan Building, S. F., Calif.

Approved: JOHN S. PARTRIDGE,
Judge U. S. District Court.

Approved as to form:

GROVE J. FINK,

Asst. U. S. Atty.

[Endorsed]: Filed Apr. 28, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[64]

Cost Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS,
That We, Gustave Johnson as principal, and National Surety Company, as sureties, are held firmly bound unto United States of America in the full and just sum of Two Hundred and Fifty (\$250.00) Dollars, to be paid to the said United States of

America, its certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of April in the year of our Lord One Thousand, Nine Hundred and Twenty-three.

WHEREAS, lately at a District Court of the United States for the Southern Division Northern District of California, First Division, cause #13,169 in a suit depending in said Court, between United States of America against Gustave Johnson, et al., defendants, a judgment was rendered against the said Gustave Johnson and the said Gustave Johnson having obtained from said Court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Gustave Johnson shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

G. A. JOHNSON. (Seal)

NATIONAL SURETY COMPANY. (Seal)

C. T. Hughes, (Seal)

By C. T. Hughes, (Seal)

Its Attorney in Fact.

Acknowledged before me the day and year first above written.

[Seal] LYLE S. MORRIS,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Apr. 28, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[65]

4/28/23 Approved as to form.

GROVE J. FINK,
Asst. U. S. Attorney.

4/28/23 Bond approved.

JOHN S. PARTRIDGE,
Judge U. S. District Court. [66]

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 66 pages numbered from 1 to 66, inclusive, contains a full, true and correct transcript of certain records and proceedings, in the case of the United States of America vs. Gustave Johnson, No. 13,169, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on writ of error (copy of which is embodied herein), and the instructions of the Attorney for Defendant and Plaintiff in error herein.

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error is the sum of Twenty-Four Dollars and Twenty-five

Cents (\$24.25) and that the same has been paid to me by the attorney for the plaintiff in error herein.

Annexed hereto are the original writ of error (page 68), return to writ of error (page 69) and original citation on writ of error (page 70).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 13th day of August, A. D. 1923.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [67]

Writ of Error (Original).

United States of America,—ss.

The President of the United States of America,
To the Honorable, the Judges of the District
Court of the United States for the Northern
District of California. GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Gustave Johnson, plaintiff in error and the United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Gustave Johnson, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that

then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 2d day of August, in the year of our Lord one thousand nine hundred and twenty-three.

WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

By C. W. Calbreath,
Deputy Clerk.

Allowed by

JOHN S. PARTRIDGE,
Judge.

Receipt of a copy of the within writ of error is admitted this 2d day of August, 1923.

JOHN T. WILLIAMS,
U. S. Attorney.

T. J. SHERIDAN,
Asst. U. S. Attorney.

[Endorsed]: No. 13,169. United States District Court for the Northern District of California. Gustave Johnson, Plaintiff in Error, vs. United States of America, Defendant in Error. (Original.) Writ of Error. Filed Aug. 2, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [68]

Return to Writ of Error.

The answer of the Judges of the District Court of the United States of America, for the Northern District of California, to the within writ of error.

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mentioned is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 13th day of August, A. D., 1923, duly lodged in the case in this Court for the within named defendant in error.

By the Court:

[Seal] WALTER B. MALING,
Clerk, United States District Court Northern District of California.

By C. M. Taylor,
Deputy Clerk. [69]

Citation on Writ of Error (Original).

United States of America,—ss.

The President of the United States, to the United States of America, and to John T. Williams, Esq., United States Attorney, and to Grove J. Fink, Esq. and Thomas J. Sheridan, Esq., assistants to the United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, wherein Gustave Johnson is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the Northern District of California this 2d day of August, A. D. 1923.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: No. 13,169. United States District Court for the Northern District of California. Gustave Johnson, Plaintiff in Error, vs. United States of America, Defendant in Error. (Original.) Citation on Writ of Error. Filed Aug. 2, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Receipt of a copy of the within citation on writ of error is hereby admitted this 2d day of August, 1923.

JOHN T. WILLIAMS,
S.

U. S. Attorney. [70]

[Endorsed]: No. 4077. United States Circuit Court of Appeals for the Ninth Circuit. Gustave Johnson, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Filed August 14, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.